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83-6202

CASE No. _____

ORIGINAL

UNITED STATES SUPREME COURT

WASHINGTON, D.C.

RECEIVED
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SUPREME COURT, U.S.

ON APPEAL FROM THE ELEVENTH CIRCUIT

VINCENT GRAHAM TAYLOR

APPELLANT

CIRCUIT CASE NO. 82-3181

DISTRICT CASE NO.: 82-18-CR-T-BK

RESPECTFULLY SUBMITTED

VINCENT GRAHAM TAYLOR

PRO SE

UNITED STATES SUPREME COURT

WASHINGTON, D.C.

UNITED STATES OF AMERICA	:
APPELLEE	:
V.	:
VINCENT GRAHAM TAYLOR	:
APPELLANT	:

STATEMENT OF JURISDICTION

NOW COMES THE APPELLANT AND HEREBY PROVIDES THE INFORMATION REQUIRED OF THE JURISDICTIONAL STATEMENT FOR THIS COURT AS SET OUT IN RULE 15 OF THE SUPREME COURT RULES.

RESPECTFULLY SUBMITTED

VINCENT GRAHAM TAYLOR
PRO SE

(A) QUESTION PRESENTED FOR REVIEW OF THIS COURT.

DID THE COURT OF APPEALS ACT PROPERLY IN DENYING THE APPELLANT PERMISSION TO FILE HIS BRIEF OUT-OF-TIME IN A DIRECT APPEAL THAT HE WAS TAKING WITH THE COURT?

(B) N/A

(C) N/A

(D) THERE WAS NO OPINION PUBLISHED BY THE COURT OF APPEALS IN THE DETERMINATION OF THIS ACTION. THE DECISION WAS ANNOUNCED IN A ONE-PAGE ORDER PUBLISHED ON SEPTEMBER 13, 1983.

(E) THIS ACTION IS AN APPEAL REQUESTING REVIEW OF AN ORDER OF THE COURT OF APPEALS THAT WAS ISSUE ON SEPTEMBER 13, 1983.

THIS COURT HAS JURISDICTION IN THIS CASE BASED ON ITS CONSTITUTIONAL POWER TO SUPERVISE THE LOWER COURTS IN THE FEDERAL JUDICIAL SYSTEM IN THE EXERCISE OF THEIR POWER.

(F) SUPERVISORY POWER OF THE SUPREME COURT AS DELINIATED IN THE CONSTITUTION OF THE UNITED STATES. (SEE APPENDIX)

(G) THIS ACTION IS THE RESULT OF THE COURT OF APPEALS

DENYING THE APPELLANT PERMISSION TO FILE AN APPEAL BRIEF OUT-OF-TIME.

THE APPELLANT WAS ATTEMPTING TO APPEAL A DECISION OF THE DISTRICT COURT WHICH DENIED THE APPELLANT RELIEF UNDER RULE 35 TO CORRECT GROSSLY DISPARATE SENTENCES OF TWO CO-DEFENDANTS. UPON DENIAL OF THIS REQUEST UNDER RULE 35, THE APPELLANT HAD FILED A TIMELY NOTICE OF APPEAL WITH THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT.

APPELLANT WAS NOTIFIED ON MAY 16, 1983, THAT HIS BRIEF WAS DUE WITHIN FIFTEEN (15) DAYS. THE APPELLANT REALIZED THAT HE WOULD BE UNABLE TO PROPERLY PREPARE THIS BRIEF SINCE HE WAS A FOREIGN NATIONAL AND AT THAT TIME REQUESTED THAT COUNSEL BE APPOINTED FOR HIM. APPELLANT ALSO REQUESTED A DELAY IN THE FILING DATE FO THE BRIEF UNTIL AFTER THE COURT OF APPEALS HAD RULED ON HIS REQUEST FOR APPOINTED COUNSEL.

ON AUGUST 1, 1983, THE COURT OF APPEALS DENIED BOTH HIS REQUEST FOR COUNSEL AND HIS REQUEST TO FILE OUT-OF-TIME. ON AUGUST 4, 1983, THE APPELLANT FILED A REQUEST FOR RECONSIDERATION WITH THE COURT OF APPEALS AND ON AUGUST 13, 1983, FILED A PRO SE BRIEF WITH THE COURT OF APPEALS.

ON SEPTEMBER 12, 1983, THE APPELLEES (THE UNITED STATES OF AMERICA) FILED A RESPONSE BRIEF WITH THE COURT OF APPEALS, BUT THIS RESPONSE WAS IGNORED

AND ON SEPTEMBER 13, 1983, THE COURT OF APPEALS DECLINED TO RECONSIDER ITS ORDER. THE APPELLANT THEN FILED A NOTICE OF APPEAL WITH THIS COURT ON OCTOBER 17, 1983.

(H) IF THIS COURT SHOULD ALLOW THIS TYPE OF ACTION TO STAND ON THE PART OF THE COURT OF APPEALS, IT WOULD HAVE A VERY CHILLING EFFECT ON THE APPEAL'S PROCESS BY **PRO SE** LITIGANTS. THIS COURT HAS CONSTANTLY HELD THAT **PRO SE** ACTIONS ARE TO BE CONSTRUED VERY LIBERALLY AND THE **PRO SE** LITIGANT IS TO BE GIVEN THE BENEFIT OF ANY DOUBT IN THE FILING OF ACTIONS. THE FACTS IN THIS ACTION CLEARLY SHOW THAT THE APPELLANT DID ALL WITHIN HIS POWER TO COMPLY WITH THE ORDERS AND DIRECTIONS OF THE COURT OF APPEALS. THE QUESTION IS NOT WHETHER OF NOT THE APPEAL HAD MERIT, BUT WHETHER OR NOT THE APPELLANT SHOULD HAVE THE OPPORTUNITY TO HAVE HIS CASE HEARD BY THE COURT OF APPEALS.

IN THIS ACTION, WHERE THE APPELLEES HAD ASSUMED THAT THE APPEAL WOULD BE REINSTATED, THE ACTIONS OF THE COURT OF APPEALS WOULD SEEM TO BE EXCESSIVE.

QUESTION FOR REVIEW

DID THE COURT OF APPEALS ACT PROPERLY IN DENYING THE APPELLANT PERMISSION TO FILE HIS BRIEF OUT OF TIME IN A DIRECT APPEAL THAT HE WAS TAKING WITH THE COURT ?

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OPINION OF COURT OF APPEALS

THERE WAS NO PUBLISHED OR UNPUBLISHED OPINION IN THIS ACTION. THE ORDER OF THE COURT OF APPEALS DENYING THE REQUEST FOR RECONSIDERATION IS ATTACHED AS "C".

AUTHORITIES AND CITATIONS

ARMSTRONG v. ASHBURY, 59 F.R.D. 310 7

AVLON v. GREENCHA HOLDING CO., 232 F.2D 129 7

KING v. LABORERS INT. UNION, 443 F.2D 273 10

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UNITED STATES v. BAR ASSOCIATION OF D.C.,
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UNITED STATES v. EDWARDS, 366 F.2D 853 10

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JURISDICTION

THIS COURT HAS JURISDICTION IN THIS CASE BASED ON ITS POWER TO SUPERVISE THE COURT OF APPEALS IN THEIR ADMINISTRATIVE DECISIONS. SINCE THIS WAS AN ADMINISTRATIVE DECISION RATHER THAN A RULING ON THE MERITS OF THE CASE IN PARTICULAR, THE COURT HAS THE POWER TO REVIEW THE DECISION IN ORDER TO INSURE THAT IT WAS IN THE BEST INTEREST OF JUSTICE RATHER THAN PROCEDURALLY CORRECT.

STATEMENT OF THE CASE

THIS ACTION IS THE RESULT OF THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DENYING THE APPELLANT PERMISSION TO FILE A BRIEF OUT OF TIME.

THE APPELLANT PLED GUILTY TO CRIMINAL CHARGES IN TAMPA, FLORIDA AND WAS SENTENCED BY THAT DISTRICT COURT. FOLLOWING THE SENTENCING THE APPELLANT WAS CONFINED AT THE FEDERAL CORRECTIONAL INSTITUTION AT TALLAHASSEE, FLORIDA. WHILE CONFINED, THE APPELLANT FILED A MOTION UNDER RULE 35 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE TO HAVE HIS SENTENCE REDUCED BY THE TRIAL COURT. ONE OF THE PRIMARY ARGUMENTS IN THIS ACTION WAS THE SENTENCE CONDITIONS WHICH HELD THE APPELLANT TO CONSECUTIVE SENTENCES WHILE HIS CO-DEFENDANT WAS SENTENCED TO CONCURRENT SENTENCES.

UPON RECEIPT OF THE ORDER OF THE COURT, THE APPELLANT FILED A TIMELY NOTICE OF APPEAL WITH THE COURT. ON MAY 16, 1983, THE APPELLANT WAS NOTIFIED THAT HIS BRIEF WAS DUE WITH THE COURT OF APPEALS WITHIN 15 DAYS. THE APPELLANT THEN FILED A MOTION WITH THE COURT OF APPEALS REQUESTING APPOINTMENT OF COUNSEL AND REQUESTING A DELAY IN FILING HIS APPEAL BRIEF IN FORMA PAUPERIS. THE COURT OF APPEALS DENIED HIS MOTION AND HIS REQUEST BY ORDER OF AUGUST 1, 1983.

THE APPELLANT THEN FILED A TIMELY REQUEST FOR RECONSIDERATION ON AUGUST 4, 1983. ON AUGUST 13, 1983, THE APPELLANT FILED A BRIEF WITH THE COURT OF APPEALS.

ON SEPTEMBER 12, 1983, THE APPELLEES FILED A RESPONSE BRIEF WITH THE COURT OF APPEALS. IN THIS BRIEF THE APPELLEES DID NOT CLAIM THAT THE APPEAL SHOULD BE DENIED DUE TO THE LATENESS OF THE BRIEF.

ON SEPTEMBER 13, 1983, THE COURT OF APPEALS RETURNED THE BRIEF FOR THE APPELLANT AND DENIED HIS MOTION FOR RECONSIDERATION.

THE APPELLANT THEN FILED A NOTICE OF APPEAL WITH THE COURT WHICH HAS RESULTED IN THIS ACTION.

SUMMARY OF THE ARGUMENT

THE APPELLANT WILL SHOW THAT THE COURT OF APPEALS ACTED IN PRECIPITATED MANNER IN DECLINIG TO CONSIDER THE DIRECT APPEAL OF THE APPELLANT OUT-OF-TIME. THE APPELLANT WILL SHOW THAT THE COURT OF APPEALS FAILED TO GIVE ANY CONSIDERATION TO THE FACT THAT THE APPELLANT IS AN ALIEN WHO IS FORCED TO FILE HIS MOTIONS "PRO SE", FAILED TO GIVE ANY CONSIDERATION TO THE FACT THAT THE APPELLEES HAD ANSWER THE DIRECT APPEAL BRIEF OF THE APPELLANT, AND THAT THIS ACTION ON THE PART OF THE COURT OF APPEALS IS DIRECTLY CONTRARY TO THE OFTEN STATED FEELINGS OF THIS COURT.

ARGUMENT

ISSUE: THE COURT OF APPEALS ERRED IN REFUSING TO CONSIDER THE APPEAL OF THE APPELLANT ON THE MERIT OF THE CASE.

THE APPELLANT IS BEFORE THIS COURT SEEKING A RULING THAT WOULD REQUIRE THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT TO REVIEW HIS APPEAL OF AUGUST 9, 1983 ON THE MERITS OF THE CASE RATHER THAN SUMMARILY DISMISSING THE APPEAL BECAUSE OF A DELAY IN FILING THE BRIEF. THIS WOULD BE ACCOMPLISHED BY SETTING ASIDE THE ORDERS OF THE COURT OF APPEALS OF JULY 27, 1983, DENYING PERMISSION TO FILE OUT OF TIME; AND OF SEPTEMBER 13, 1983, REFUSING TO RECONSIDER THE ORDER OF JULY 27, 1983.

THE QUESTION BEFORE THIS COURT TURNS ON THREE DIFFERENT POINTS, ANY OF WHICH WOULD BE CAUSE FOR THIS COURT TO GRANT THE REQUEST AND RETURN THE ACTION TO THE LOWER COURT FOR A DECISION.

EXCUSABLE NEGLECT

THE FIRST POSSIBILITY, AND THE ONE THAT SURELY EXISTS IN THIS CASE, CONCERNS THE DOCTRINE OF "EXCUSABLE NEGLECT". THE COURTS HAVE HELD WHERE THE DELAY OR FAILURE TO FILE A BRIEF IS THE RESULT

OF "EXCUSABLE NEGLECT", THEN THE COURTS SHOULD ALLOW THE BRIEF TO BE FILED AND CONSIDER THE APPEAL ON ITS MERITS. (SEE UNITED STATES V. BAR ASSO. OF D.C., 190 F.2D 664) THIS COURT WILL BE ABLE TO DETERMINE, BY A REVIEW OF THE DOCUMENTS THAT HAVE BEEN SUBMITTED IN THE RECORD OF THE CASE, THAT THE APPELLANT, IN HIS REQUEST FOR RECONSIDERATION, LAID ALL THE NECESSARY FACTS OUT FOR A DETERMINATION THAT "EXCUSABLE NEGLECT" DEFINITELY EXISTED IN THIS CASE. THE APPELLANT, AS THIS COURT IS AWARE, IS PRESENTLY CONFINED AT THE FEDERAL CORRECTIONAL INSTITUTION AT TALLAHASSEE, FLORIDA. SINCE THE APPELLANT HAS BEEN CONFINED, HE HAS SEEN APPEAL ACTIONS AND DECISIONS ON A DAILY BASIS BECAUSE OF THE PAPERWORK THAT IS RECEIVED BY HIS FELLOW INMATES. BASED ON THIS FLOW OF PAPERWORK, THE APPELLANT FOUND THAT IN ALMOST EVERY CASE, THE COURT OF APPEALS RULED ON ANY REQUEST FOR COUNSEL AND REQUEST TO PROCEED AS A PAUPER BEFORE ANY AFFIRMATIVE ACTION WAS TAKEN ON THE APPEAL ITSELF. ADDITIONALLY, THE COURT OF APPEALS WOULD NORMALLY INFORM THE INDIVIDUAL ON THE STATUS OF THEIR REQUESTS AND WOULD INFORM HIM WHEN THE BRIEF WAS DUE.

IN THIS CASE, THE APPELLANT WAS NEVER TOLD WHEN HIS TIME FOR FILING STARTED TO RUN (AS DENOTED BY THE RECEIPT OF THE RECORD OF THE CASE AT THE

AT THE COURT OF APPEALS) AND HE WAS NEVER NOTIFIED AS TO WHEN THE BRIEFS WERE DUE. DESPITE THIS FAILURE TO RECEIVE ANY NOTIFICATION, THE APPELLANT CONTINUED ON HIS RESEARCH IN HIS CASE.

ON MAY 16, 1983, THE APPELLANT RECEIVED A NOTIFICATION THAT HIS BRIEF HAD TO BE FILED WITHIN THE NEXT 15 DAYS OR THE CASE WOULD BE DISMISSED. THE APPELLANT BY THIS TIME WAS TOTALLY LOST AS FAR AS THE PREPARATION OF ANY LEGAL BRIEF WAS CONCERNED. ALTHOUGH HE HAD TRIED TO THE BEST OF HIS ABILITY, HE REALIZED THAT HE WOULD BE TOTALLY UNABLE TO MASTER THE ENGLISH LANGUAGE TO THE DEGREE NECESSARY TO PREPARE A PROPER LEGAL BRIEF. SINCE HE WAS COMPLETELY OUT OF FUNDS, THE APPELLANT INMEDIATELLY FILED A REQUEST WITH THE COURT OF APPEALS EXPLAINIG HIS HANDICAPS AND REQUESTING THAT AN ATTORNEY BE APPOINTED TO COMPLETE AND FILE A BRIEF WITH THE COURT. THE APPELLANT THEN WAITED FOR A DECISION ON THIS REQUEST.

IN ORDER TO INSURE THAT HE WAS TOTALLY PROPER, THE APPELLANT ALSO REQUESTED PERMISSION TO FILE HIS BRIEF AFTER THERE HAD BEEN A DECISION MADE ON HIS REQUEST FOR APPOINTED COUNSEL SINCE HE REALIZED THAT NO DECISION WOULD BE MADE ON THIS REQUEST UNTIL AFTER THE TIME LIMITATION SET BY THE COURT OF APPEALS HAD EXPIRED. THE APPELLANT THEN WAITED FOR A RULING.

On August 1. 1983, the Appellant received an Order from the Court of Appeals denying his request for counsel, denying his request to proceed as pauper, and dismissing his appeal for lack of prosecution. The Appellant filed for reconsideration of this Order on August 4, 1983, and this request was denied on September 13, 1983.

Appellant feels that these facts show, beyond any doubt, that any failure on the part of the Appellant was the result of an imperfect understanding of the operation of the American legal system and the failure of the Court of Appeals to bend in the least manner from its rules. The Court can well imagine the confusion that would exist in the mind of an alien when trying to comprehend the workings of the appellate process in the United States, much less trying to cope with this system on his own. In other cases, the courts have held that it would be "excusable neglect" where there was a confusion on the part of trained professional legal counsel as to who was the individual responsible for the filing of the appeal briefs. (See Avlon v. Greench Holding Co., 232 F.2d 129 and Armstrong v. Ashbury, 59 F.R.D. 310) If the courts can decide to set aside its rules for individuals that are

FULLY TRAINED IN THE LAW, IN ORDER TO ALLOW A CASE TO PROCEED, THE LEAST THAT THEY SHOULD DO FOR A PERSON PROCEEDING **PRO SE** IS TO ALLOW HIM EVERY OPPORTUNITY TO HAVE HIS CASE HEARD. INDEED, THE COURTS HAVE HELD SO OFTEN AS TO BE BEYOND CAVIL THAT AN INDIVIDUAL PROCEEDING **PRO SE** IS TO HAVE HIS ACTIONS CONSTRUED LIBERALLY IN ORDER TO INSURE THAT JUSTICE IS DONE.

HOWEVER, THIS HAS NOT BEEN THE CASE. HERE THE APPELLANT HAS BEEN HELD TO AN EXTREMELY STRICT STANDARD AND HIS FAILURE TO ANTICIPATE THE COURT OF APPEALS, RATHER THAN HIS FAILURE TO ACT, HAS RESULTED IN THE ACTION BEING DISMISSED WITHOUT A REVIEW OF THE CASE ON ITS MERITS.

SINCE THE COURT OF APPEALS IS UNDER NO REQUIREMENT TO DISMISS EVERY ACTION THAT DOES NOT MEET THE TIME LIMITATIONS ON THE FILING OF A BRIEF (SEE MARCAIDA V. RASCOE, 569 F.2D 824) THE APPELLANT FEELS THAT THE COURT OF APPEALS ACTED IN A PRECIPITOUS MANNER BY SIMPLY DISMISSING THE APPEAL AT THE SAME TIME THEY NOTIFIED THE APPELLANT THAT HE WOULD NOT BE ABLE TO RECEIVE PROFESSIONAL LEGAL HELP IN PREPARING HIS BRIEF. THE COURT IS ALSO REMINDED THAT THIS WAS NOT A CASE WHICH WOULD COME UNDER THE EXCEPTION LAID DOWN IN PRANOW V. UNITED STATES, 310 F.2D 375, SINCE THE APPELLANT WAS IN

CUSTODY AND NOT AT LIBERTY IN THE COMMUNITY.

THUS, THE APPELLANT FEELS THAT THE FACTS SHOW THAT HE MADE AN HONEST ATTEMPT TO COMPLY WITH THE REQUIREMENTS OF THE FEDERAL RULES OF APPELLATE PROCEDURES TO THE BEST OF HIS ABILITY. HE ATTEMPTED TO SAVE THE COURT AND THE GOVERNMENT THE EXPENSE OF HAVING A COUNSEL APPOINTED. IT WAS NOT UNTIL HE REALIZED THAT HE WAS SIMPLY NOT UP TO THE TASK OF PREPARING HIS OWN APPEAL THAT HE REQUESTED ASSISTANCE. TO HOLD THESE EFFORTS AGAINST HIM AT THIS POINT WOULD SEEM TO BE PUNISHING HIM FOR HIS EFFORTS, ESPECIALLY SINCE THE APPELLANT HAD ABSOLUTELY NOTHING TO GAIN BY DELAYING HIS APPEAL. THE APPELLANT FEELS THAT THE FACTS IN THIS CASE MORE THAN SUPPORTS HIS CONTENTION THAT ANY FAILURE TO FILE HIS BRIEF IN A TIMELY MANNER WAS "EXCUSABLE NEGLECT" AND THAT THIS COURT SHOULD INSTRUCT THE COURT OF APPEALS TO CONSIDER THE APPEAL ON ITS MERITS.

NON-JURISDICTIONAL DEFECT

THE COURTS HAVE REPEATEDLY HELD THAT WHEN THE CASE BEFORE IT IS OF SOME IMPORT, THE COURT SHOULD CONSIDER THAT:

> "..... THE LATE OF FILING OF BRIEFS IS, 'AT MOST (A) NON-JURISDICTIONAL (DEFECT) IN THE PROSECUTION OF (T)HIS APPEAL WHICH WE CONSI-

DER INSUFFICIENT TO WARRANT DISMISSAL'. (PHILLIPS V. EMPLOYERS MUTUAL LIABILITY INS. CO., 239 F.2D 79, SEE ALSO KING V. LABORERS INT. UNION, 443 F.2D 273, AND UNITED STATES V. EDWARDS, 366 F.2D 853)." WALKER V. MATHEWS, 546 F.2D 814 (9TH CIRCUIT 1976)

APPELLANT FEELS THAT HIS CASE SHOULD BE CONSIDERED UNDER THIS RULE, SPECIALLY SINCE THE POINT IN ISSUE IS A TERM OF IMPRISONMENT, RATHER THAN A CIVIL ACTION. THE PUNISHMENT OF COMPLETE DISMISSAL OF THE APPEAL IS ENTIRELY TOO HARSH FOR THE FACTS IN THIS CASE.

LACK OF PREJUDICE TO THE APPELLEES

THE APPELLANT FEELS THAT THIS COURT SHOULD BE AWARE THAT THE APPELLEES HAVE, AT NO TIME, RAISED THE POINT THAT SOME PREJUDICE WOULD FLOW TO THEM IF THE RECONSIDERATION HAD BEEN GRANTED AND THE APPELLANT HAD BEEN PERMITTED TO HAVE HIS BRIEF CONSIDERED. IN FACT, THE OPPOSITE WOULD ACTUALLY BE TRUE. ATTACHED AS "A" IS THE BRIEF THAT WAS FILED WITH THE COURT OF APPEALS ON AUGUST 9, 1983. THE BRIEF WAS PREPARED BY A "WRIT WRITER", WHO WAS CONTACTED BY THE APPELLANT AFTER HE FOUND THAT HE WOULD NOT HAVE COUNSEL APPOINTED FOR HIM. AS THE COURT CAN

SEE, THIS BRIEF WAS INITIALLY ACCEPTED AND FILED WITH THE CLERK, BUT WAS THEN RETURNED TO THE APPELLANT AFTER THE RULING OF SEPTEMBER 13, 1983.

THE FILING OF THIS BRIEF DID RESULT IN ONE CRITICAL ACTION BEING TAKEN. ON SEPTEMBER 12, 1983, THE APPELLEES FILED WITH THE COURT OF APPEALS (AND MAILED TO APPELLANT) A COPY OF THEIR BRIEF IN RESPONSE (ATTACHMENT "B"). IN THIS BRIEF, THE APPELLEES HAD THE OPPORTUNITY TO RAISE THE POINT THAT THE APPEAL SHOULD BE SET ASIDE FOR WANT OF PROSECUTION, FOR WANT OF JURISDICTION, OR FOR FAILURE TO COMPLY WITH THE FEDERAL RULES OF APPELLATE PROCEDURE. INSTEAD, THE APPELLEES RAISED NONE OF THESE POSSIBLE DEFENSES AND SIMPLY RESPONDED TO THE ISSUES RAISED IN THE BRIEF OF THE APPELLANT. IN CASES WHERE THE QUESTION OF THE TIMELESS OF THE BRIEFS HAS BEEN RAISED, THE COURTS HAVE OFTEN CONSIDERED THE AMOUNT OF PREJUDICE THAT HAS RESULTED AS BEING OF PRIME IMPORTANCE. (SEE MARCAIDA V. RASCOE, SUPRA AT 830) THE COURTS HAVE GONE SO FAR AS TO STATE:

> "WHILE APPELLANT HAS NOT PROCEEDED DILIGENTLY, THE SECRETARY HAS NOT SHOWN ANY PREJUDICE STEMMING FROM THE DELAY...."
>
> WALKER V. MATHEWS, SUPRA AT NOTE 3, P. 818.

SINCE THE APPELLEES HAVE FAILED TO RAISE THE POINT OF PREJUDICE TO THEIR CASE, IT WOULD SEEM THAT NONE HAS OCCURRED AND THE CASE SHOULD PROCEED.

CONCLUSION

APPELLANT FEELS THAT THERE IS MORE THAN SUFFICIENT EVIDENCE BEFORE THIS COURT TO SHOW THAT THE COURT OF APPEALS ACTED IN A PRECIPITOUS MANNER IN DENYING HIM THE OPPORTUNITY TO HAVE HIS ACTION DECIDED ON THE MERITS OF THE CASE. IT IS OBVIOUS FROM THE FACTS IN THE CASE THAT THE APPELLANT WAS NOT ENGAGED IN SOME TYPE OF DELAYING TACTIC IN THIS ACTION, BUT WAS SIMPLY TRYING TO HAVE THE BEST BRIEF POSSIBLE PREPARED FOR THE COURT. IT IS ALSO OBVIOUS THAT THE APPELLEE SUFFERED NO PREJUDICE THROUGH THE DELAY IN THIS CASE, AND IN FACT, FULLY EXPECTED THE COURT OF APPEALS TO GRANT THE REQUEST FOR RECONSIDERATION AS SHOWN BY THEIR RESPONSE BRIEF OF SEPT. 12, 1983.

THE APPELLANT FEELS THAT THE COURT MUST, UPON A REVIEW OF THE EVIDENCE, RULE IN FAVOR OF THE APPELLANT AND HAVE THE CASE RETURNED TO THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT WITH DIRECTIONS TO CONSIDER THE CASE ON ITS MERITS.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 82-3181

U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
FILED
SEP 13 1983
Spencer D. Mercer
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VINCENT GRAHAM TAYLOR,

Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Florida

---

Before FAY, KRAVITCH and CLARK, Circuit Judges.

B Y T H E C O U R T :

IT IS ORDERED THAT pro se appellant's motion for reconsideration of this court's order of 7-27-83 denying appellant leave to file his brief out of time is denied.

ANNEX "C"

ISSUED AS MANDATE: September 13,19

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA, :

Plaintiff, :

vs. : Case No. 82-18 Cr-T-K

VINCENT GRAHAM TAYLOR, :

Defendant. :

ORDER

The Court has for consideration a timely filed motion for reduction or modification of sentence which will be considered under the provisions of Rule 35 of the Federal Rules of Criminal Procedure.

The Court has again examined the file, is familiar with the presentence investigation report, has considered said motion, and is of the opinion that said motion should be and it is DENIED.

IT IS SO ORDERED at Tampa, Florida this 16 day of November, 1982.

BEN KRENTZMAN
SENIOR UNITED STATES DISTRICT JUDGE

Copies to: U.S. Attorney
Vincent G. Taylor

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

U.S. COURT OF APPEALS
FILED
JUL 27 1983
NORMAN E. ZOLLER
CLERK

No. 82-3181

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VINCENT GRAHAM TAYLOR,

Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Florida

---

O R D E R:

IT IS ORDERED THAT pro se appellant's motion for leave to appeal in forma pauperis is Denied.

IT IS FURTHER ORDERED THAT pro se appellant's motion for appointment of counsel is Denied.

IT IS ORDERED THAT pro se appellant's motion for leave to file brief out of time is Denied.

Robert A. Vance

UNITED STATES CIRCUIT JUDGE

(2)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No: 81-18-Cr-T-H

UNITED STATES OF AMERICA,

v.

VINCENT GRAHAM TAYLOR,

Defendant.

NOTICE OF APPEAL

COMES NOW THE DEFENDANT, VINCENT GRAHAM TAYLOR, pro se, and hereby gives notice that he hereby appeals to the United States Court of Appeals for the Eleventh Circuit from the order negating his Motion to Mitigate and his Motion for Reconsideration of Motion to Mitigate his sentence in the above captioned case.

Defendant, at present, is not able to retain counsel and desires to procede pro se in this matter. Inasmuch as defendant is presently incarcerated, the appropriate filing fee shall be submitted through a third party directly to the clerk under separate cover.

/s/

VINCENT GRAHAM TAYLOR
P.M.B. 1000
Tallahassee, Fla. 32301
b/North

(4)

SUPREME COURT
OF THE UNITED STATES
WASHINGTON, D.C.

UNITED STATES OF AMERICA :
APPELLEE :
v. :
VINCENT GRAHAM TAYLOR :
APPELLANT :

MOTION TO PROCEED IN FORMA PAUPERIS

NOW COMES THE APPELLANT IN THE ABOVE STYLED ACTION AND, IN COMPLIANCE WITH RULE 46 OF THE RULES OF THE SUPREME COURT, REQUESTS PERMISSION TO PROCEED IN FORMA PAUPERIS IN THIS ACTION. IN SUPPORT OF THIS ACTION, THE FOLLOWING INFORMATION IS MADE KNOWN TO THIS COURT:

1. THE APPELLANT REQUESTED PERMISSION TO PROCEED IN FORMA PAUPERIS BEFORE THE COURT OF APPEALS, BUT THIS REQUEST WAS DENIED BY THE COURT BASED, EVIDENTLY, ON THEIR DECISION TO NOT EXCEPT THE BRIEF OF THE APPELLANT.

2. THE APPELLANT HAS ATTACHED AN AFFIDAVIT WHICH SHOWS THAT HE IS UNABLE TO PREPAY THE FEES REQUIRED BY THIS COURT AND IS UNABLE TO PAY THE COST OF REPRODUCTION OF HIS DOCUMENTS IN THE QUANTITY REQUIRED BY THIS COURT IF THIS MOTION IS DENIED.

3. THE ACTION BEFORE THIS COURT IS NOT A FRIVOLOUS MOTION, BUT IS BROUGHT IN GOOD FAITH; APPELLANT BELIEVING

THAT THE COURT OF APPEALS ACTED IN AN IMPROPER MANNER TO A DEGREE REQUIRING THIS COURT TO EXCERCISE ITS SUPERVISORY POWERS ON THE LOWER COURT.

FOR THESE REASONS, THA APPELLANT FEELS THAT HE HAS MET ANY MINIMUM STANDARD NECESSARY TO CAUSE THIS COURT TO GRANT HIM PERMISSION TO PROCEED IN FORMA PAUPERIS.

RESPECTFULLY SUBMITTED,

VINCENT GRAHAM TAYLOR
PRO SE

STATEMENT OF SERVICE

I HEREBY STATE THAT A COPY OF THE FOREGOING HAS BEEN FURNISHED VIA U.S. MAIL ON THIS 23RD DAY OF JANUARY, 1984, TO THE APPELLEE: ROBERT W. MERKLE
UNITED STATES ATTORNEY,
AND/OR: CHARLES A. CARUSO
KARLA R. SPAULDING
ASSISTANT U.S. ATTORNEYS
500 ZACK STREET, ROOM 410
TAMPA, FLORIDA 33602
ATTORNEYS FOR RESPONDENT-APPELLEE UNITED STATES OF AMERICA.

VINCENT GRAHAM TAYLOR

UNITED STATES DISTRICT COURT

United States

v.

VINCENT GRAHAM TAYLOR
(Movant)

AFFIDAVIT IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS

I, VINCENT GRAHAM TAYLOR, being first duly sworn, depose and say that I am the movant in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

I further swear that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? Yes [X] No [ ]
   a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer. F.C.I. TALLAHASSEE - WAGE APPROX. $30.00/MONTH
   b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?
   a. Business, profession or form of self-employment? Yes [ ] No [X]
   b. Rent payments, interest or dividends? Yes [ ] No [X]
   c. Pensions, annuities or life insurance payments? Yes [ ] No [X]
   d. Gifts or inheritances? Yes [X] No [ ]
   e. Any other sources? Yes [ ] No [X]

   If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months. MY SON IN LAW AND DAUGHTER SEND ME GIFTS OF $50.00 OCCASIONALLY FOR MY PHONE CALLS TO COLOMBIA.

3. Do you own any cash, or do you have money in a checking or savings account?

   Yes [X] No [ ] (Include any funds in prison accounts)

   If the answer is "yes," state the total value of the items owned. PRISON ACCOUNT "COMMISSARY ACCOUNT" : $93.47 AT THIS MOMENT BUT I OWE $25.00 FROM A TELEPHONE CALL.

4. Do you own real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

   Yes [ ] No [X]

If the answer is "yes," describe the property and state its approximate value. _____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 1-13-84
(Date)

(Signature)

CERTIFICATE

I hereby certify that the petitioner herein has the sum of $ 63.00 on account to his credit at the Baker Correctional Institution Raiford, Fl institution where he is confined. I further certify that petitioner likewise has the following securities to his credit according to the records of said institution: N/A

Authorized Officer of Institution

1-13-84

AUTHORIZED BY THE ACT OF JULY 7, 1955
TO ADMINISTER OATHS: 28 U. S. C. 4004.

Paul W. Ott
Case Manager II
1-31-84

Notary Public, State of Florida
My Commission expires ... 1985
Bonded Thru Troy Fain - Insurers, Inc.